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PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District <u>MIDDLE OF PA</u>
Name (under which you were convicted): <u>LEVI LAPP STOLTZFOOS</u>		Docket or Case No.:
Place of Confinement: <u>SCI-COALTOWNSHIP</u>		Prisoner No.: <u>HR-7274</u>
Petitioner (include the name under which you were convicted) <u>LEVI LAPP STOLTZFOOS</u>		Respondent (authorized person having custody of petitioner) <u>JOHN E. WETZEL SECRETARY</u> <u>KATHLEEN KIRK, ESQ.</u>
The Attorney General of the State of <u>PENNSYLVANIA</u>		

FILED
SCRANTON

PETITION

NOV 01 2013

1. (a) Name and location of court that entered the judgment of conviction you are challenging: COURT OF COMMON PLEAS OF LANCASTER COUNTY, PA. PER AMC
DEPUTY CLERK
- (b) Criminal docket or case number (if you know): CP-36-CR-5995-2006
2. (a) Date of the judgment of conviction (if you know): JULY 22, 2008 - MAY 8-2008
- (b) Date of sentencing: JULY 22, 2008
3. Length of sentence: _____
4. In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
5. Identify all crimes of which you were convicted and sentenced in this case:
58 COUNTS UNDER 18 PA.C.S.A. § 5111(a)(3) DEALING
IN PROCEEDS OF UNLAWFUL ACTIVITIES, AVOIDING A
CURRENCY TRANSACTION REPORT.
6. (a) What was your plea? (Check one)

(1) Not guilty <input checked="" type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Superior Court of NJ

(b) Docket or case number (if you know): 30 K1A-2040

(c) Result: Denial

(d) Date of result (if you know): 7-22-08

(e) Citation to the case (if you know): _____

(f) Grounds raised: INSUFFICIENT GROUNDS FOR CONVICTION, DAD NOT MEET THE REQUIRED ELEMENTS FOR A CONVICTION, STATUTE IS OVER BROAD - UNCONSTITUTIONAL, SINGLE SUBJECT RULE - INCORRECT JURY CHARGE - FOR AN UNKNOWN VIOLATION IN SENTENCING

(g) Did you seek further review by a higher state court? Yes ☐ No ☒

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: COURT OF COMMON PLEAS OF LANCASTER COUNTY

(2) Docket or case number (if you know): CP-36-CR-5995-2006

(3) Date of filing (if you know): 12-5-2008

(4) Nature of the proceeding: PCRA

(5) Grounds raised: INSUFFICIENT EVIDENCE, UNCONSTITUTIONAL
STATUTE - OVER BOARD STATUTE, INEFFECTIVE COUNSEL,
RE-INSTATEMENT OF APPEAL

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒

(7) Result: Quial

(8) Date of result (if you know): 12-5-2008

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(1) First petition: . Yes ☒ No ☐

(2) Second petition: Yes ☒ No ☐

(3) Third petition: Yes ☐ No ☐

(c) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: STATUTE 18 PA-C.S.A. § 5111 (A)(3) IS UNCONSTITUTIONAL

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

STATUTE 18 PA-C.S.A. § 5111 WAS AMENDED ON 6-28-2002 TO INCLUDE SUBSECTION (A)(3) WHEREAS, THE MAIN FRAME OF THIS STATUTE IS "DEALING IN PROCEEDS OF UNLAWFUL ACTIVITIES".

- (b) If you did not exhaust your state remedies on Ground One, explain why:

- (c) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

- (2) If you did not raise this issue in your direct appeal, explain why:

- (d) Post-Conviction Proceedings:

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: PCPA

Name and location of the court where the motion or petition was filed:

COURT OF COMMON PLEAS OF LANCASTER COUNTY, PA.

Docket or case number (if you know): CE-5995-2006

Date of the court's decision: 11-8-2011

Result (attach a copy of the court's opinion or order, if available):

COPY ATTACHED IN EXHIBITS

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: SUPERIOR COURT OF PA - MIDDLE DISTRICT

Docket or case number (if you know): 2148 MDA-2011

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

ATTACHED

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

FILED PETITION FOR ALLOWANCE OF APPEAL WITH THE
SUPREME COURT OF PA.

GROUND TWO: INEFFECTIVE ASSISTANCE OF COUNSEL.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

COUNSEL FAILED TO CHALLENGE THE LEGALITY OF THE
STATUTE THIS PETITIONER WAS CHARGED UNDER. IN PROPER
JURY INSTRUCTIONS - DID NOT MEET THE ELEMENTS OF ILLEGAL
ACTIVITIES.

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: PCR

Name and location of the court where the motion or petition was filed: _____

Court of Common Pleas of Lancaster County PA

Docket or case number (if you know): CP-36-CR-5995-2006

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Superior Court - Supreme

Court of PA

Docket or case number (if you know): 2148-MD-2011

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

Denial - one judge dissenting

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two:

GROUND THREE: VIOLATION OF SINGLE SUBJECT RULE

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE ATTACHED MEMORANDUM OF LAW

(b) If you did not exhaust your state remedies on Ground Three, explain why:

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: PCRA

Name and location of the court where the motion or petition was filed:

COURT OF COMMON PLEAS OF LANCASTER COUNTY

Docket or case number (if you know): CP-36-CL-5995-2006

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): Denial

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Supreme Court of RA - Middle District

Docket or case number (if you know): 2148-MB-2011

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): Admitted

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE ATTACHED MEMORANDUM OF LAW

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: PCRA

Name and location of the court where the motion or petition was filed:

Court of Common Pleas of Lancaster County, PA

Docket or case number (if you know): CP-36-CL-5998-2006

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

Attached

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Superior Court of PA - Middle District

Docket or case number (if you know): 2148-MDA-2011

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

Attached

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

NONE

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: VINCENT J. QUINN, ESQ.
1347 Froftalle Pike, Lancaster, PA - 17601

(g) On appeal from any ruling against you in a post-conviction proceeding: VINCENT J. QUINN, ESQ.

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

[The page contains faint, illegible markings and noise.]

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

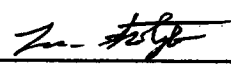
ANY AND ALL RELIEF THAT IS JUST AND FAIR - DECLARE STATE
18 Pa.C.S.A. 511 UNCONSTITUTIONAL - VAGUE IN STRUCTURE

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this
Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____
_____. (month, date, year).

Executed (signed) on 10-25-13 (date).


Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing
this petition. _____

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

LEVI LAPP STOLTZFOOS
Petitioner

Docket No.

v.

Judge:

JOHN E. WETZEL, SECRETARY, et al.,

NOTICE OF ELECTION

I, Levi Lapp Stoltzfoos, hereby elect to proceed with the within Petition For Writ of Habeas Corpus as filed. In the event of newly obtained evidence, or additional legal support through research, this Petitioner reserves the right to amend the filing.

Respectfully submitted:

 10-25-13

Levi Lapp Stoltzfoos



Priority Mail
ComBasPrice

Name Levi Lapp Stoltzfoos

Number HR-7274

1 Kelley Drive
Coal Township, PA 17866-1021

NO FEE REQUIRED

Legal Mail

United States District Court
Office of The Clerk
235 North Washington Avenue
P.O. Box 1143
Scranton, PA 18501-1148

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NOV 01 2013

PER

DEPUTY CLERK

SCANNED

